

**Introduced by Senator Alquist**

January 25, 2010

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An act to amend Section 1558 of the Health and Safety Code, relating to health and care facilities.

## LEGISLATIVE COUNSEL'S DIGEST

SB 892, as introduced, Alquist. Community care facilities.

Existing law, the California Community Care Facilities Act, provides for the licensure and regulation of community care and residential facilities by the State Department of Social Services.

This bill would make technical, nonsubstantive changes to a provision of that act.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1558 of the Health and Safety Code is  
2     amended to read:  
3     1558. (a) The department may prohibit any person from being  
4     a member of the board of directors, an executive director, or an  
5     officer of a licensee, or a licensee from employing, or continuing  
6     the employment of, or allowing in a licensed facility, or allowing  
7     contact with clients of a licensed facility by, any employee,  
8     prospective employee, or person who is not a client who has:  
9     (1) Violated, or aided or permitted the violation by any other  
10    person of, any provisions of this chapter or of any rules or  
11    regulations promulgated under this chapter.

1 (2) Engaged in conduct ~~that~~ is inimical to the health, morals,  
2 welfare, or safety of either an individual in or receiving services  
3 from the facility, or the people of the State of California.

4 (3) Been denied an exemption to work or to be present in a  
5 facility, when that person has been convicted of a crime as defined  
6 in Section 1522.

7 (4) Engaged in any other conduct that would constitute a basis  
8 for disciplining a licensee.

9 (5) Engaged in acts of financial malfeasance concerning the  
10 operation of a facility, including, but not limited to, improper use  
11 or embezzlement of client moneys and property or fraudulent  
12 appropriation for personal gain of facility moneys and property,  
13 or willful or negligent failure to provide services.

14 (b) The excluded person, the facility, and the licensee shall be  
15 given written notice of the basis of the department's action and of  
16 the excluded person's right to an appeal. The notice shall be served  
17 either by personal service or by registered mail. Within 15 days  
18 after the department serves the notice, the excluded person may  
19 file with the department a written appeal of the exclusion order.  
20 If the excluded person fails to file a written appeal within the  
21 prescribed time, the department's action shall be final.

22 (c) (1) The department may require the immediate removal of  
23 a member of the board of directors, an executive director, or an  
24 officer of a licensee or exclusion of an employee, prospective  
25 employee, or person who is not a client from a facility pending a  
26 final decision of the matter, when, in the opinion of the director,  
27 the action is necessary to protect residents or clients from physical  
28 or mental abuse, abandonment, or any other substantial threat to  
29 their health or safety.

30 (2) If the department requires the immediate removal of a  
31 member of the board of directors, an executive director, or an  
32 officer of a licensee or exclusion of an employee, prospective  
33 employee, or person who is not a client from a facility, the  
34 department shall serve an order of immediate exclusion upon the  
35 excluded person that shall notify the excluded person of the basis  
36 of the department's action and of the excluded person's right to a  
37 hearing.

38 (3) Within 15 days after the department serves an order of  
39 immediate exclusion, the excluded person may file a written appeal  
40 of the exclusion with the department. The department's action

1 shall be final if the excluded person does not appeal the exclusion  
2 within the prescribed time. The department shall do the following  
3 upon receipt of a written appeal:

4 (A) Within 30 days of receipt of the appeal, serve an accusation  
5 upon the excluded person.

6 (B) Within 60 days of receipt of a notice of defense pursuant  
7 to Section 11506 of the Government Code by the excluded person  
8 to conduct a hearing on the accusation.

9 (4) An order of immediate exclusion of the excluded person  
10 from the facility shall remain in effect until the hearing is  
11 completed and the director has made a final determination on the  
12 merits. However, the order of immediate exclusion shall be deemed  
13 vacated if the director fails to make a final determination on the  
14 merits within 60 days after the original hearing has been completed.

15 (d) An excluded person who files a written appeal with the  
16 department pursuant to this section shall, as part of the written  
17 request, provide his or her current mailing address. The excluded  
18 person shall subsequently notify the department in writing of any  
19 change in mailing address, until the hearing process has been  
20 completed or terminated.

21 (e) Hearings held pursuant to this section shall be conducted in  
22 accordance with Chapter 5 (commencing with Section 11500) of  
23 Division 3 of Title 2 of the Government Code. The standard of  
24 proof shall be the preponderance of the evidence and the burden  
25 of proof shall be on the department.

26 (f) The department may institute or continue a disciplinary  
27 proceeding against a member of the board of directors, an executive  
28 director, or an officer of a licensee or an employee, prospective  
29 employee, or person who is not a client upon any ground provided  
30 by this section. The department may enter an order prohibiting  
31 any person from being a member of the board of directors, an  
32 executive director, or an officer of a licensee or prohibiting the  
33 excluded person's employment or presence in the facility, or  
34 otherwise take disciplinary action against the excluded person,  
35 notwithstanding any resignation, withdrawal of employment  
36 application, or change of duties by the excluded person, or any  
37 discharge, failure to hire, or reassignment of the excluded person  
38 by the licensee or that the excluded person no longer has contact  
39 with clients at the facility.

1 (g) A licensee's failure to comply with the department's  
2 exclusion order after being notified of the order shall be grounds  
3 for disciplining the licensee pursuant to Section 1550.

4 (h) (1) (A) In cases where the excluded person appealed the  
5 exclusion order, the person shall be prohibited from working in  
6 any facility or being licensed to operate any facility licensed by  
7 the department or from being a certified foster parent for the  
8 remainder of the excluded person's life, unless otherwise ordered  
9 by the department.

10 (B) The excluded individual may petition for reinstatement one  
11 year after the effective date of the decision and order of the  
12 department upholding the exclusion order pursuant to Section  
13 11522 of the Government Code. The department shall provide the  
14 excluded person with a copy of Section 11522 of the Government  
15 Code with the decision and order.

16 (2) (A) In cases where the department informed the excluded  
17 person of his or her right to appeal the exclusion order and the  
18 excluded person did not appeal the exclusion order, the person  
19 shall be prohibited from working in any facility or being licensed  
20 to operate any facility licensed by the department or *from being* a  
21 certified foster parent for the remainder of the excluded person's  
22 life, unless otherwise ordered by the department.

23 (B) The excluded individual may petition for reinstatement after  
24 one year has elapsed from the date of the notification of the  
25 exclusion order pursuant to Section 11522 of the Government  
26 Code. The department shall provide the excluded person with a  
27 copy of Section 11522 of the Government Code with the exclusion  
28 order.